

United States District Court
Southern District of Texas
FILED

JUN 05 2012

David J. Bradley, Clerk of Court

JOE SHIELDS
16822 Stardale Lane
Friendswood, Texas 77546
Phone: 281-482-7603

JOE SHIELDS IN PRO PER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOE SHIELDS)	CIVIL ACTION No. _____
)	
Plaintiff)	
)	
vs.)	
)	
SMILEY MEDIA INC. F/K/A SMILEY)	
NETWORKS INC.)	COMPLAINT FOR CIVIL DAMAGES
)	AND INJUNCTIVE RELIEF
Defendant)	

ORIGINAL COMPLAINT

1. Plaintiff Joe Shields brings this action under the Telephone Consumer Protection Act (hereinafter TCPA), 47 U.S.C. §227, (1991) and the Code of Federal Regulations (hereinafter CFR) implementing the TCPA, 47 CFR §64.1200 to obtain statutory civil damages, treble damages, injunctive relief and any other equitable relief the Plaintiff is entitled to under the TCPA.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 47 U.S.C. §227(b)(3) and 28 USC §1357. Federal Courts have federal question jurisdiction, 28 USC §1331, because this case is about a cause of action created by a

federal statute namely 47 U.S.C. §227(b)(3). Federal Courts have federal jurisdiction, 28 USC §1357, because this case is about an injury to a person under an Act of Congress namely 47 U.S.C. §227.

3. Venue is proper in this District under 28 USC §1391(b)(2) because all or a substantial part of the events or omissions giving rise to the stated claim(s) occurred in Harris County, Texas.

PLAINTIFF

4. Plaintiff is an individual residing in Harris County, Texas. Plaintiff is a cellular telephone subscriber and has had his current number since August of 2007. Prior to the events complained about Plaintiff did not know the Defendant nor did Plaintiff have any dealings with the Defendant. Plaintiff never provided prior express consent to the Defendant or anyone acting in concert with the Defendant for text message calls to be made to Plaintiff's cellular telephone. Further, Plaintiff's cell number is and has been, since August of 2007, on the State and Federal do-not-call list.

DEFENDANT

5. Smiley Media Inc. is a Texas corporation operating under Texas laws. The Defendant may be served by serving any employee of Defendant's Texas registered agent CT Corporation System via

certified mail return receipt requested at 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

6. The Defendant is a lead generator. Defendant uses text message calls to drive consumers to its web site where it collects lead information. Defendant then sells the lead information to its marketing partners. The Defendant conducts an especially pernicious form of marketing: the transmission of unauthorized advertisements in the form of "text message" calls to consumer's cellular telephone numbers throughout the nation without prior express consent of the recipients of the text message calls. These text message calls are made by or on behalf of the Defendant and for the benefit of the Defendant.
7. The text message calls offer incentives to consumers to visit Defendant's web site and at that web site sign up for Defendant's marketing network. Plaintiff received just such a text message call on behalf of the Defendant. The text message call made by or on behalf of the Defendant led to Defendant's web site where Defendant wanted to collect and then sell Plaintiff's personal identifiable information as lead information to Defendant's marketing partners.
8. Defendant owns and controls the domain and all sub domains of smileymedia.com. A subdomain of the Defendant's website, ian.smileymedia.com, was part of the text message call that was

made to Plaintiff's cellular telephone number by or on behalf of the Defendant.

9. Plaintiff notified Defendant in writing that neither the Defendant nor anyone acting in concert with Defendant had ever obtained prior express consent from Plaintiff to make text message calls to Plaintiff's cellular telephone. Despite such notice Defendant refuses to this day to take any action to stop the text message calls made by or on behalf of the Defendant to Plaintiff's cellular telephone number. The text message calls do not provide any way of opting out. Thus, the Defendant is intentionally interfering with Plaintiff's attempts to stop the offending, unwanted and illegal text message calls.

THE TCPA

10. Text messages are "calls" as defined by the TCPA, the Federal Communications Commission (hereinafter "FCC) and all the courts that have had the opportunity to entertain similar claims. The TCPA prohibits telephone calls made by automatic dialing systems without prior express consent and that applies to text messages as well. Prior express consent was not obtained from the Plaintiff prior to the text message calls made by or on behalf of the Defendant to Plaintiff's cellular telephone.
11. The Defendant need not be the one that actually initiated the text message calls to Plaintiff's cellular telephone to be liable for the violation(s) of the TCPA. The TCPA, the FCC and

the courts consider those on whose behalf a violation of the TCPA occurred to be liable for such violation(s).

VIOLATIONS OF THE TCPA

Count I

12. Plaintiff realleges and incorporates the allegations of paragraph 4 through 11 as though fully set forth herein. On or about February 12th, 2012 at or about 13:34 p.m. a text message call stating Plaintiff had "been selected for a free Best Buy gift card for \$1000.00" was made to Plaintiff's 281-468-9701 cellular telephone number. See exhibit 1 attached hereto. The text message call was made by or on behalf of the Defendant. The link in the text message call led to Defendant's web page at <http://ian.smileymedia.com>. See exhibit 2 attached hereto. There was never any prior express consent from the Plaintiff for such a text message call to be made to Plaintiff's cellular telephone number. Thus the initiation of such text message call is a violation of 47 U.S.C. (b)(1)(A)(iii) and 47 CFR 64.1200(a)(1)(iii).

Count II

13. Plaintiff realleges and incorporates the allegations of paragraph 4 through 11 as though fully set forth herein. On March 17th, 2012 at or about 08:46 a.m. another text message call about a "Best Buy \$1000 Gift card for the first 1000 users" was made to the Plaintiffs cellular telephone number

281-468-9701. See exhibit 3 attached hereto. The text message call was made by or on behalf of the Defendant. There was never any prior express consent from the Plaintiff for such a text message call to be made to Plaintiff's cellular telephone number. Thus the initiation of such text message call is a violation of 47 U.S.C. (b)(1)(A)(iii) and 47 CFR 64.1200(a)(1)(iii).

Count III

14. Plaintiff realleges and incorporates the allegations of paragraph 4 through 11 as though fully set forth herein. On June 2nd, 2012 at or about 02:54 p.m. another text message call about a "Free \$1000 Best Buy Gift card" was made to the Plaintiffs cellular telephone number 281-468-9701. See exhibit 4 attached hereto. The text message call was made by or on behalf of the Defendant. There was never any prior express consent from the Plaintiff for such a text message call to be made to Plaintiff's cellular telephone number. Thus the initiation of such text message call is a violation of 47 U.S.C. (b)(1)(A)(iii) and 47 CFR 64.1200(a)(1)(iii).

APPLICABLE TO ALL COUNTS

15. The TCPA states that an individual may bring a civil action against a person who violates the TCPA. Pursuant to 47 U.S.C. (b)(3) Plaintiff is entitled to bring this civil action against the Defendant for violations of the TCPA. Pursuant to 47 U.S.C.

(b)(3), Plaintiff hereby seeks statutory damages of \$500.00 for each violation of the TCPA. Thus, Plaintiff seeks \$500.00 for each count alleged.

16. Plaintiff also alleges that the violations of the TCPA committed by the Defendant were done willfully and/or knowingly. Pursuant to 47 U.S.C. (b)(3), Plaintiff thus seeks additional damages in an amount determined by the Court to be equal to treble the amount found by the Court in accordance with Paragraph 15 hereof.

17. Plaintiff further alleges that Defendant will continue to harm Plaintiff and others by refusing to take any action to stop the text message calls Plaintiff and others are receiving. Consequently, Plaintiff believes an injunction is necessary to ensure Defendant's compliance with the TCPA. Pursuant to 47 U.S.C. (b)(3), Plaintiff hereby seeks an injunction barring the Defendant from continuing to violate the TCPA.

PRAYER FOR RELIEF

18. WHEREFORE, premises considered, Plaintiff prays that the Defendant be cited to appear and answer herein and that upon trial hereof Plaintiff recover a judgment of and from the Defendant for his damages as allowed by law, treble damages, as allowed by law, injunctive relief as allowed by law, all costs of court and for all such other and further relief, at

law and in equity, to which Plaintiff may show himself justly entitled.

A handwritten signature in cursive script, reading "Joe Shields", positioned above a horizontal line.

Joe Shields
Plaintiff Pro Per
16822 Stardale Lane
Friendswood, Texas 77546
Home: 281-482-7603

EXHIBIT 1

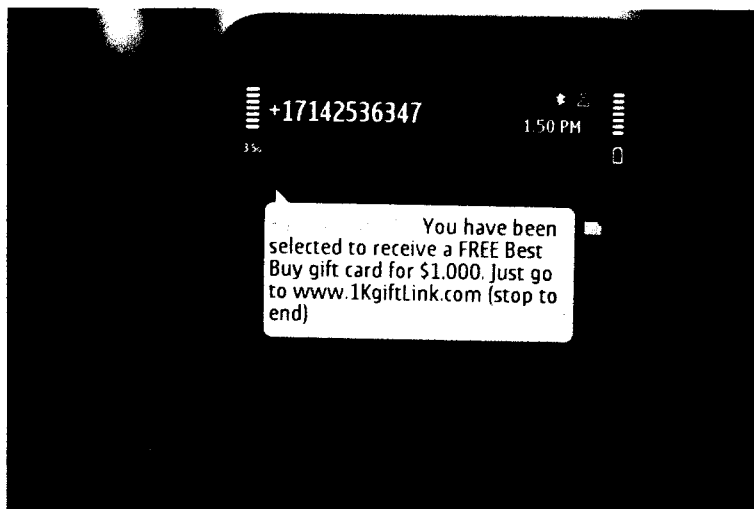
Transcript of Illegal Text Message:

+17142536347: You have been
Selected to receive a FREE Best
Buy gift card for \$1000. Just go
to 1kgiftlink.com (stop to
end) 1:34 PM

I received the above illegal text message on my cell number 281-468-9701. I did not provide prior express consent for the illegal text message call to be made nor was there ever any prior express consent given to any company owning web pages linked to from the web page in the illegal text message. As a matter of principle I have provided my cell number to any one for any business purpose. Further, my cell number was and is on the National and State do-not-call lists.

The web site 1kgiftlink.com redirects to a web site, mygiftcarddeal.com, where after entering an email address one is transferred to a web page with a form asking for more personal information including a cell number. After entering information on mygiftcarddeal.com, one is transferred to a web page at gtooffers.com. Entering a cell phone number on that page leads to ian.smileymedia.com. The intent of this string of web pages is to sign up peoples cell phone numbers to premium mobile phone services i.e. ringtones, games, wallpapers, etc., marketing offers and other nefarious money making schemes for the web site owner(s). The web page source code for ian.smileymedia.com connects directly to mygiftcarddeal.com.

The privacy policy located at smileymedia.com describes exactly what occurs if one follows the link in the illegal text message: *"The website located at www.smileymedia.com (the "Site"), and all subdomains, constitutes the Smiley Media Advertising Network. The Smiley Media Advertising Network allows Internet users to opt-in to advertising offers by sending answers to questions and personal information to selected advertisers."* The company that owns the smileymedia.com web site is Smiley Media Inc. f/k/a Smiley Networks Inc. Smiley Media Inc. is physically located in Austin, Texas.



Perpetrators Contact Information:

Smiley Media Inc. f/k/a Smiley Networks Inc.
Stephen Oskoui – CEO
Slade Cutter - General Counsel
701 Brazos St. Suite 1600
Austin, TX 78701
Phone: 512-480-9990
www.smileymedia.com
privacy@smileymedia.com
dmca@smileymedia.com

EXHIBIT 2

Get Your \$1,000 Best Buy Gift Card

Step 3 Complete The Survey Below

Please take 5 minutes to complete our survey loaded with Free and Special Offers



You're Almost Finished!

Defendant's web site

Please verify the information and continue.

Information denoted by (*) is invalid

First Name John
Last Name Doe
Email address * privacy@smileymedia.c
Country United States

Cell Phone Number 00:08

Verify and Continue

Pass

Click Verify to agree to the privacy policy below.

Ads by Smiley Media - Advertise here - Smiley Media Privacy policy - DMCA policy

EXHIBIT 3

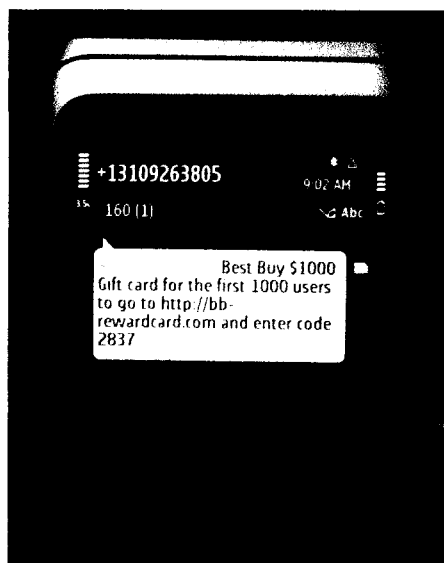
Transcript of Illegal Text Message:

+3109263805 Best Buy \$1000
Gift card for the first 1000 users
to go to [http://bb-
rewardcard.com](http://bb-rewardcard.com) and enter code
2837 08:46 AM

I received the above illegal text message call on my cell phone 281-468-9701. I did not provide prior express consent for the illegal text message call to be made nor was there ever any prior express consent given to any company owning web pages linked to from the web page in the illegal text message. As a matter of principle I have provided my cell number to any one for any business purpose. Further, my cell number was and is on the National and State do-not-call lists.

The web site bb-rewardcard.com takes one to electronicgiftsnow.com which takes one to mywebrewardsclub.com. This is the same web page one arrives at when following the links in the 02/12/12 Smiley Network Inc. illegal text message call. Under the guise of being a scam the web pages ask for personal information which if submitted is used to send email, text calls, prerecorded calls, etc. to submitted cell phone numbers.

Again it appears that Smiley Media Inc. in collusion with others is intentionally ignoring my do-not-call demand and is retaliating against me for filing my claim against them. See *Shields v. Smiley Networks Inc.*, Cause No. SC82C0030255, In The Small Claims Court, Precinct No. 8 Place 2, Harris County, Texas.



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dmca@smileymedia.com

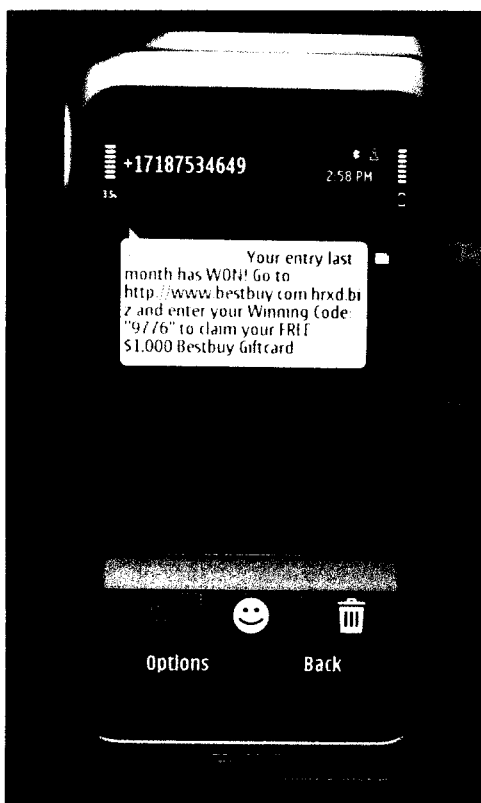
EXHIBIT 4

Transcript of Illegal Text Message:

+17187534649 Your entry last month has WON! Go to <http://www.bestbuy.com.hrxd.biz> and enter your Winning Code: "9776" to claim your FREE \$1,000 Bestbuy Giftcard
06/02/2012 2:54 PM

I received the above illegal text message on my cell number 281-468-9701. I did not provide prior express consent for the illegal text message call to be made nor was there ever any prior express consent given to any company owning web pages linked to from the web page in the illegal text message. As a matter of principle I have provided my cell number to any one for any business purpose. Further, my cell number was and is on the National and State do-not-call lists.

The web site bestbuy.com.hrxd.biz will take any code then redirects to two form pages on thegiftcarddeal.com. These are the exact same web pages as the text message call I received on 02-12-12 (mygiftcarddeal.com) and 03-17-12 (electronicgiftsnow.com) which led to Smiley Media Inc. Coincidentally, my original claim against Smiley Media Inc. was dismissed 4 days ago.



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